



UNITED STATES DEPARTMENT OF COMMERCE  
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/440,428 05/12/95 DORN

12M2/1007

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H BAYER-9265-1	
EXAMINER	
ROBINSON, A	
ART UNIT	PAPER NUMBER

1209  
DATE MAILED:

#11  
10/07/96

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 8-26-96 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.       |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/>   |

Part II SUMMARY OF ACTION

1. ☒ Claims 2-5 and 10-14 are pending in the application.  
Of the above, claims 13 and 14 are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☒ Claims 2-5 and 10-12 are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Art Unit 1209

Claims 13 and 14 stand withdrawn from further consideration as being drawn to a non-elected invention.

Claims 2-5 and 10-12 are the remaining claim which are acted upon on their merits to the extent that they read on the elected invention. See paper number 8, page 2.

Claims 3 and 4 are improperly dependent upon more than one claim. Correction is requested.

The term "non-systemically" (claim 10, line 2) should be changed to "topically" to put said claim in better form.

Claims 2-5 and 10-12 are rejected under 35 USC 103 as being unpatentable over Kristiansen et al. (A), Shiokawa et al. (B) Elbert et al. (AT) and Derwent Abstract of JP 03,279,389 (AR") all of record and for reasons of record as set forth in paper Number 8, pages 3 and 4. Applicants' arguments and the declaration by Dr. Hubert Dorn have been carefully considered; however, they are not deemed persuasive. The above prior art clearly teaches that the claim designated compounds, analogues and/or isomers thereof are old insecticides effective against insects of the type claimed. Therefore, no patentable distinction can be seen between the claims of record and that suggested by the prior art. The declaration by Dr. Dorn is insufficient to overcome the above rejection since the instant claims are not commensurate in scope with the data presented.

Serial No. 08/440,423

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Art Unit 1209

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Robinson/maj  
October 01, 1996

ALLEN J. ROBINSON  
PRIMARY EXAMINER  
GROUP 1200